SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

REGULATION 61-62.70
TITLE V OPERATING PERMIT PROGRAM

70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of Title V of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.). These regulations define the minimum elements required for South Carolina's Part 70 operating permit program and the corresponding standards.

(b) All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While Title V of the Clean Air Act does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall prevent the Department from establishing additional or more stringent requirements not inconsistent with this Act. The U.S. Environmental Protection Agency will approve South Carolina's program submittal to the extent that it is not inconsistent with the Act and the Federal Part 70 regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under Title V of the Act.

(d) The requirements of Part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under Title IV of the Act (acid rain program).

(e) Issuance of State permits under this part may be coordinated with issuance of permits under other applicable laws, whether issued by State or Federal agencies.

(f) RESERVED

(g) Severability. If any section, subsection, phrase, clause, or portion of this regulation, or the applicability to any person, is adjudged to be unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining portions of this regulation shall not be affected.

(h) Appeals. Any final determination made by the Department pursuant to these regulations shall be subject to the appeals provisions of Regulation No. 61-72 and the S.C. Administrative Procedures Act Section 1-23-310, et seq.

70.2 Definitions.

a. "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

b. “Administrator” means the Administrator of the United States Environmental Protection Agency (EPA) or his designee.

c. “Affected source” means a source that includes one or more affected units that are subject to the acid rain provisions under Title IV of the Act.

d. “Affected States” are:

(1) The States of Georgia and/or North Carolina if, as determined by the Department, their air quality may be directly affected by emissions from the facility seeking a Part 70 permit, permit modification or permit renewal being proposed; or

(2) That are within 50 miles of the permitted source.

e. “Affected unit” means a unit that is subject to the acid rain emission reduction requirements or limitations and regulations promulgated under Title IV of the Act.

f. “Applicable requirement” means all of the following as they apply to emissions units in a Part 70 source subject to these regulations (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the South Carolina Implementation Plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the pertinent requirements of the Act, including any revisions to that plan promulgated in 40 Code of Federal Regulations (CFR) Part 52;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the Act;

(3) Any standard or other requirement under Section 111 of the Act, including Section 111(d);

(4) Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels, under Section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be

contained in a Title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

g. “Area source” means any stationary source of hazardous air pollutants that is not a major source.

h. “Department” means the Department of Health and Environmental Control.

i. “Designated representative” means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit under acid rain requirements of Title IV of the Act and regulations promulgated thereunder.

j. “Draft permit” means the version of a permit for which the Department offers public participation under §70.7(h) or affected State review under §70.8.

k. “Effective date” of this Part 70 regulation, including any partial or interim program approved under this Part, shall be the effective date of approval by the Administrator as published in the *Federal Register.*

l. “Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

m. “Emissions unit” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of the Title IV acid rain requirements of the Act.

n. The “EPA” means the Administrator of the U.S. Environmental Protection Agency or his designee.

o. “Final permit” means the version of a Part 70 permit issued by the Department that has completed all review procedures required by §§70.7 and 70.8.

p. “Fugitive emissions” are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

q. “General permit” means a Part 70 permit that meets the requirements of §70.6(d).

r. “Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, latest revision.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plant;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the Act;

(3) A major stationary source as defined in Part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

s. "Non-major source" means a source that is not major under this Part.

t. "Part 70 permit" or "permit" (unless the context suggests otherwise) means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Part.

u. "Part 70 program" or "State program" means a program approved by the Administrator under this Part.

v. “Part 70 source” means any source subject to the permitting requirements of this Part, as provided in §§70.3(a) and 70.3(b).

w. “Permit modification” means a revision to a Part 70 permit that meets the requirements of §70.7(e).

x. “Permit revision” means any permit modification or administrative permit amendment.

y. “Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is Federally enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in the Title IV acid rain requirements of the Act or the regulations promulgated thereunder.

z. “Proposed permit” means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with §70.8.

aa. “Regulated air pollutant” means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

bb. “Renewal” means the process by which a permit is reissued at the end of its term.

cc. “Responsible official” means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter l980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the Department;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under the Title IV acid rain requirements of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under Part 70.

dd. "Section 111" means that portion of the Federal Clean Air Act that addresses New Source Performance Standards (NSPS).

ee. "Section 112" means that portion of the Federal Clean Air Act that addresses standards for hazardous air pollutants.

ff. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

gg. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

hh. "Title I modification or modification under any provision of Title I of the Act" means any modification under §§ 111 or 112 of the Act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Part C and D of the Act.

ii. "Title III" means that portion of the Federal Clean Air Act that addresses requirements for the administration and control of emissions of toxic air pollutants.

jj. "Title IV" means that portion of the Federal Clean Air Act that addresses requirements for the administration and control of air emissions contributing to acid deposition (acid rain).

kk. "Title V" means that portion of the Federal Clean Air Act that established the requirements for federal operating permits, permit fees, and approval of comparable State programs.

ll. "Title VI" means that portion of the Federal Clean Air Act that provides for Stratospheric Ozone and Global Climate Protection, primarily through the control and reduction of emissions of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

mm. "Title VII" means that portion of the Federal Clean Air Act that addresses enforcement of the Act,

including the provisions for civil, administrative, and criminal penalties (as codified in Section 113 of the Act).

70.3 Applicability.

(a) Part 70 sources. The following sources are subject to the permitting requirements of this Part:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of this Act;

(4) Any affected source under the Title IV Acid Rain Program;

(5) Any source in a source category designated by the Administrator pursuant to this Section; and

(6) Any source listed in §70.3(a) that is exempt from the requirement to obtain a permit under §70.3(b) may opt to apply for a permit under this Part 70 program.

(b) Source category exemptions.

(1) All sources listed in §70.3(a) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act, shall be exempted by the State from the obligation to obtain a Part 70 permit for 4 years after the effective date of the program or until such time as the Administrator completes a rulemaking to determine how the program should be structured for non-major sources and the appropriateness of any permanent exemptions in addition to those provided for in §70.3(b)(4).

(2) In the case of non-major sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a Part 70 permit at the time that the new standard is promulgated.

(3) RESERVED.

(4) The following source categories are exempted from the obligation to obtain a Part 70 permit, but are not exempted from other Department and EPA requirements:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation.

(c) Emissions units and Part 70 sources.

(1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any non-major source subject to the Part 70 program under §§ 70.3(a) or (b), the Department shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to the Part 70 program.

(d) Fugitive emissions. Fugitive emissions from a Part 70 source shall be included in the permit application and the Part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(e) Applicability Determinations. Any person that operates or proposes to operate a particular source or installation may submit a request in writing that the Department make a determination as to whether a particular source or installation is subject to the permit requirements of this regulation. The request must contain such information as is believed sufficient for the Department to make the requested determination. The Department may request any additional information that it needs for purposes of making the determination.

70.4 State program submittals and transition. RESERVED.

70.5 Permit applications.

(a) Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this Section.

(1) Timely application.

(i) A timely application for a source applying for a Part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the Department may establish.

(ii) Part 70 sources required to meet the requirements under Section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the South Carolina Implementation Plan under Part C or D of Title I of the Act, shall file a complete application to obtain the Part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration.

(iv) Applications for initial phase II acid rain permits shall be submitted to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(v) The applicant is encouraged to consult with Department personnel before submitting an application or, at any other time, concerning the operation, construction, expansion, or modification of any installation, or concerning the required pollution control devices or systems, the efficiency of such devices or systems, or the level of emissions related to the installation. In addition, a source that is required to obtain a preconstruction permit may submit an application for an operating permit or permit modification for concurrent processing. An operating permit application submitted for concurrent processing shall be submitted with the source's preconstruction review application or at such later time as the Department may

allow.

(2) Complete application. To be deemed complete, an application must provide all information required pursuant to §70.5(c), except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under §70.5(c) must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify that the submitted information is consistent with §70.5(d).

(i) Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in §70.7(a)(4).

(ii) If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(iii) The source's ability to operate without a permit, as set forth in §70.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department.

(iv) In submitting an application for renewal of an operating permit issued under these regulations, a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and previous permit application(s) and any subsequently issued permit amendment(s) or modification(s) that describe products, processes, operations, and emissions to which those terms and conditions apply. The source must identify specifically and list which portions of its previous permit and/or applications are incorporated by reference. In addition, a renewal application must contain:

(A) information specified in §70.5(c) for those products, processes, operations, and emissions that

(1) are not addressed in the existing permit;

(2) are subject to applicable requirements that are not addressed in the existing permit; or

(3) as to which the source seeks permit terms and conditions that differ from those in the existing permit; and

(B) a compliance plan and certification as required in §70.5(c)(8).

(3) Confidential information. Where a source has submitted information to the Department under a claim of confidentiality, the Department may also require the source to submit a copy of such information directly to the Administrator.

(b) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) Standard application form and required information. Information as described below for each emissions unit at a Part 70 source shall be included in a Department approved application. Air emissions or air emission

units that are insignificant are exempted. However, for these emission units which are exempted, a list of the emission units must be included in the application. "Insignificant Activity" generally means any air emissions or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1000 pounds per year of any compound listed in Regulation 61-62.5, Standard No. 8 - Toxic Air Pollutants. The Department may determine that certain types or classes of units may be considered insignificant at higher emission levels, or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Department shall maintain a list subject to EPA approval of air emissions or air emission units which are considered to be insignificant. No emission or activity can be excluded from a Title V operating permit to the extent it is needed to determine compliance with an applicable requirement, as defined under §70.2 f. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to §70.9. The Department approved forms and attachments shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under §70.5(c). The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to §70.9(b).

(ii) Identification and description of all points of emissions described in §70.5(c)(3)(i) in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method(s).

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the Part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations in South Carolina Code of Laws Regulation 61-62.7).

(viii) Calculations on which the information in items (i) through (vii) above is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary for proper evaluation of the source as determined by the Department.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to §70.6(a)(9) or to define permit terms and conditions implementing §70.7(e)(5) or §70.6(a)(10).

(8) A compliance plan for all Part 70 sources that contains all the following:

(i) A description of the source's compliance status and where appropriate a compliance schedule with respect to all applicable requirements as follows:

(A) For applicable requirements with which the source is in compliance, a statement that during the permit term the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a narrative description of how the source will achieve compliance with such requirements, a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(ii) RESERVED.

(iii) RESERVED.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Compliance certification requirements as follows:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with §70.5(d) and Section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for annual submission of compliance certifications during the permit term, unless a more frequent schedule is specified by the underlying applicable requirement or by the Department; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

70.6 Permit content.

(a) Standard permit requirements. Each permit issued under this Part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If the Department allows the use of alternative emission limit(s) at a Part 70 source in the South Carolina State Implementation Plan, alternative emission limit(s), that are made in the permit issuance, renewal, or significant modification process, shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) The Department shall issue permits for a fixed term not to exceed 5 years. Sources subject to Title IV of the Act shall be issued permits with a fixed term of 5 years. Notwithstanding this requirement, the Department shall issue permits for solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) Monitoring and related recordkeeping and reporting requirements.

(i) Each permit shall contain the following requirements with respect to monitoring:

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64, Compliance Assurance Monitoring (October 22, 1997, [64 FR 54900]), and any other procedures and methods that may be promulgated pursuant to

sections 114(a)(3) or 504(b) of the Clean Air Act Amendments of 1990. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to §70.6(a)(3)(iii). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of §70.6(a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with §70.5(d).

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Department shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the Part 70 permit. Any permit noncompliance constitutes a violation of the South Carolina Pollution Control Act and/or the Federal Clean Air Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality. The Department may also request that the permittee furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a Part 70 source pays fees to the Department consistent with the fee schedule approved pursuant to §70.9. Failure to pay applicable fee can be considered grounds for permit revocation.

(8) A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Department. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in §70.6(f) to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Part.

(10) Terms and conditions, if requested by the permit applicant and approved by the Department, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under §§70.6(a) and (c) to determine compliance;

(ii) May extend the permit shield described in §70.6(f) to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this Part.

(11) Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit need only specify that it will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term.

(b) Federally-enforceable requirements.

(1) All terms and conditions in a Part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(2) Notwithstanding §70.6(b)(1), the Department shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§70.7, 70.8, or of this Section, other than those contained in §70.6(b).

(c) Compliance requirements. All Part 70 permits shall contain the following elements with respect to compliance:

(1) Consistent with §70.6(a)(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a Part 70 permit shall contain a certification by a responsible official that meets the requirements of §70.5(d).

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Federal Clean Air Act and/or the South Carolina Pollution Control Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with §70.5(c)(8).

(4) Progress reports consistent with an applicable schedule of compliance and §70.5(c)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) A schedule for annual submission of compliance certifications during the permit term, unless a more frequent schedule is specified in the applicable requirement or by the Department;

(ii) In accordance with §70.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under Part 64 of this chapter occurred; and

(D) Such other facts as the permitting authority may require to determine the compliance status of the source.

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

(6) Such other provisions as the Department may require.

(d) General permits.

(1) The Department may, after notice and opportunity for public participation provided under §70.7(h), issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Department shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of §70.6(f), the source shall be subject to enforcement action for operation without a Part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for a Part 70 permit consistent with §70.5. The Department may, in the general permit, provide for applications which deviate from the requirements of §70.5, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under §70.7(h), the Department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) Temporary sources. The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No sources subject to Title IV of the Federal Clean Air Act shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the Department at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this Section.

(4) Such other conditions as the Department may require.

(f) Permit shield.

(1) The Department may expressly include in a Part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination

or a concise summary thereof.

(2) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in §70.6(f) or in any Part 70 permit shall alter or affect the following:

(i) The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that Section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to Section 114 of the Act.

(4) The permit shield shall not apply to sources subject to §§70.7(e)(5) and 70.7(e)(2) and (3).

(g) Emergency provision.

(1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of §70.6(g)(3) are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee shall submit verbal notification of the emergency to the Department within 24 hours of the time when emission limitations were exceeded, followed by written notification within 30 days. This notice fulfills the requirement of §70.6(a)(3)(iii)(B). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable

requirement.

70.7 Permit issuance, renewal, reopenings, and revisions.

(a) Action on application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(i) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under §70.6(d);

(ii) Except for modifications qualifying for minor permit modification procedures under §§70.7(e)(2) and (3), the Department has complied with the requirements for public participation under §70.7(h);

(iii) The Department has complied with the requirements for notifying and responding to affected States under §70.8(b);

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of Part 70; and

(v) The Administrator has received a copy of the proposed permit and any notices required under §§70.8(a) and 70.8(b), and has not objected to issuance of the permit under §70.8(c) within the time period specified therein.

(2) The Department shall take final action on each permit application (including a request for permit modification or renewal) within 18 months, after receiving a complete application. Exceptions to this schedule are provided in the initial transition plan required under the 40 Code of Federal Regulations Part 70.4(b)(11) or under regulations promulgated under Title IV or Title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program.

(3) RESERVED.

(4) The Department shall promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in §70.7(e)(2) and (3), the Department will not require a completeness determination.

(5) The Department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA and to any other person who requests it.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

(b) Requirement for a permit. No Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under a Part 70 program. If a Part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's

failure to have a Part 70 permit is not a violation of this Part until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph §70.7(a)(4), and as required by §70.5(a)(2), the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. Exceptions to this section are provided in §70.7(e)(5)(i) and §70.7(e)(2)(v) and (3)(v).

(c) Permit renewal and expiration.

(1) Renewal and expiration of permits

(i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance; and

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with §70.5(a)(1)(iii), §70.5(a)(2)(iv), and §70.7(b). In this case, the permit shall not expire until the renewal permit has been issued or denied. All the terms and conditions of the permit including any permit shield that may be granted pursuant to §70.6(f) shall remain in effect until the renewal permit has been issued or denied.

(2) RESERVED.

(d) Administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

(v) Incorporates into the Part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§70.7 and 70.8 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in §70.6; or

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved Part 70 program to be similar to those in §70.7(d)(1)(i) through (iv).

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) An administrative permit amendment may be made by the Department consistent with the following:

(i) The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The Department shall submit a copy of the revised permit to the Administrator.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request, except transfer/ownership which must comply with South Carolina Code of Laws Regulation 61-62.1 Section IIE.

(4) The Department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in §70.6(f) for administrative permit amendments made pursuant to §70.7(d)(1)(v) which meet the relevant requirements of §§70.6, 70.7, and 70.8 for significant permit modifications.

(e) Permit modification. A permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under §70.7(d). A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Program description. RESERVED.

(2) Minor permit modification procedures.

(i) Criteria.

(A) Minor permit modification procedures may be used only for those permit modifications that:

(1) Do not violate any applicable requirement;

(2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(3) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(A) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and

(B) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

(5) Are not modifications under any provision of Title I of the Act; and

(6) Are not required by the Department to be processed as a significant modification.

(B) Notwithstanding §§70.7(e)(2)(i)(A) and (e)(3)(i), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the South Carolina Implementation Plan or in applicable requirements promulgated by EPA.

(ii) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of §70.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with §70.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the Department to use to notify the Administrator and affected States as required under §70.8.

(iii) Within 5 working days of receipt of a complete permit modification application, the Department shall meet its obligation under §§70.8(a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modification. The Department promptly shall send any notice required under §70.8(b)(2) to the Administrator.

(iv) Within 90 days of the Department's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under §70.8(c), whichever is later, the Department shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by §70.8(a).

(v) The Department may allow the source to make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in §70.7(e)(2)(iv) (A) through (C), the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) The permit shield under §70.6(f) may not extend to minor permit modifications.

(3) Group processing of minor permit modifications. Consistent with this paragraph, the Department may modify the procedure outlined in §70.7(e)(2) to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) Criteria. Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under §70.7(e)(2)(i)(A); and

(B) That collectively are below the threshold level approved by the Administrator as part of the Department's approved program. This threshold shall be 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in §70.2, or 5 tons per year, whichever is least.

(ii) Application. An application requesting the use of group processing procedures shall meet the requirements of §70.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with §70.5(d), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under §70.7(e)(3)(i)(B).

(E) Certification, consistent with §70.5(d), that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the Department to use to notify the Administrator and affected States as required under §70.8.

(iii) On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under §70.7(e)(3)(i)(B) of this Section, whichever is earlier, the Department promptly shall meet its obligation under paragraphs (a)(1) and (b)(1) of §70.8 to notify the Administrator and affected States of the requested permit modifications. The Department shall send any notice required under §70.8(b)(2) to the Administrator.

(iv) The provisions of §70.7(e)(2)(iv) shall apply to modifications eligible for group processing, except that the Department shall take one of the actions specified in §70.7(e)(2)(iv)(A) through (D) within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under §70.8(c), whichever is later.

(v) The Department may allow the source to make the changes proposed for group processing in its

minor permit modification application immediately after it files such application. After the source makes the changes allowed by the preceding sentence, and until the Department takes any of the actions specified in §70.7(e)(2)(iv)(A) through (C), the source must comply with both the applicable requirements governing the changes and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) The permit shield under §70.6(f) may not extend to minor permit modifications eligible for group processing.

(4) Significant modification procedures.

(i) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that:

(A) Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or recordkeeping permit terms or conditions;

(B) Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or visibility or increment analysis;

(C) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) A Federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

(2) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act; and

(D) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under §70.7(d).

Nothing herein shall be construed to preclude the permittee, upon appropriate approval by the Department, from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) Significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Department shall complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(5) Operational Flexibility. A permitted facility is authorized to make changes within their facility without requiring a permit revision, if the changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided that the facility provides the Administrator and the Department with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the Department provides in its regulations a different time frame for emergencies.

The source, Department, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this authorization:

(i) The permitted sources are allowed to make Section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in §70.6(f) of this part shall not apply to any change made pursuant to §70.7(e)(5)(i).

(ii) The Department may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the South Carolina Implementation Plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in §70.7(e)(5). This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under §70.7(e)(5)(ii), the written notification required above shall include such information as may be required by the provision in the South Carolina Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the South Carolina Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the South Carolina Implementation Plan and that provide for the emissions trade.

(B) The permit shield described in §70.6(f) of this part shall not extend to any change made under §70.7(e)(5)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the South Carolina Implementation Plan authorizing the emissions trade.

(iii) The Department shall, if a permit applicant requests it, issue permits that contain terms and conditions, including all terms required under §§70.6(a) and (c) to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under §70.7(e)(5)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in §70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(6) Off-Permit Changes. Except as provided in §70.7(e)(6)(v) below, a facility is allowed to make

changes that are not addressed or prohibited by the permit without a permit revision. The provisions under this Section do not excuse any facility from the preconstruction permitting requirements under South Carolina Regulation No. 61-62.1. Any such change shall be subject to the following requirements and restrictions:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the Department and EPA of each such change, except for changes that qualify as insignificant under §70.5(c). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under §70.6(f).

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(v) No permittee shall make, without a permit revision, a change that is not addressed or prohibited by the facility's Part 70 permit, if such a change is subject to any requirements under Title IV of the Act or is a modification under any provision of Title I of the Act.

(f) Reopening for cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major Part 70 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to §70.7(c)(1)(ii).

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The Administrator or the Department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under §70.7(f)(1) shall not be initiated before a notice of such intent is provided to the Part 70 source by the Department at least 30 days in advance of the date that the permit is to be reopened,

except that the Department may provide a shorter time period in the case of an emergency.

(g) Reopenings for cause by EPA.

(1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to §70.7(f), the Administrator will notify the Department and the permittee of such finding in writing.

(2) The Department shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the Department must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the Department within 90 days of receipt.

(4) The Department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the Department fails to submit a proposed determination pursuant to §70.7(g)(2) or fails to resolve any objection pursuant to §70.7(g)(4), the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in §70.7(g)(1) through (4).

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

(h) Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the Department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to Section 503(e) of the Act, except for information entitled to confidential treatment pursuant to Section 114(c) of the Act (the contents of a Part 70 permit shall not be entitled to protection under Section 114(c) of the Act), and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(3) The Department shall provide such notice and opportunity for participation by affected States as is provided for by §70.8;

(4) The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under Section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.

70.8 Permit review by EPA and affected States.

(a) Transmission of information to the Administrator.

(1) Unless otherwise agreed to between the Department and the Administrator, the Department shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final Part 70 permit. The applicant may be required by the Department to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan.

(2) RESERVED.

(3) The Department shall keep for at least 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the Department complies with the requirements of the Act or of this Part.

(b) Review by affected States.

(1) Unless otherwise agreed to between the Department and the Administrator, the Department shall give notice of each draft permit to any affected State on or before the time that the Department provides this notice to the public under §70.7(h), except to the extent §70.7(e)(2) or (3) requires the timing of the notice to be different.

(2) The Department, as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under §70.7(e)(2) or (3)), shall notify the Administrator and any affected State in writing of any refusal by the Department to accept all recommendations for the proposed permit that any affected State submitted during the public or affected State review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this Part.

(c) EPA objection.

(1) No permit for which an application must be transmitted to the Administrator under §70.8(a) shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) RESERVED.

(3) Failure of the Department to do any of the following shall constitute grounds for an EPA objection:

(i) Failure to comply with §§70.8(a) or (b);

(ii) Failure to submit any information necessary to review adequately the proposed permit;

(iii) Failure to process any permit under the procedures approved to meet §70.7(h) except for minor permit modifications; or

(iv) Failure of any proposed permit to be in compliance with applicable requirements or requirements under this part.

(4) If the Department fails, within 90 days after the date of an EPA objection under §70.8(c)(1), to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of this Act.

(d) If the Administrator does not object in writing under §70.8(c), any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in §70.7(h), unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in §§70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(e) Prohibition on default issuance. RESERVED.

70.9 Fee determination and certification.

(a) The Department shall require that the owners or operators of Part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this Section will be used solely for permit program costs. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in §70.9(b).

(b) Fee schedule adequacy.

(1) The Department shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in Section 507 of the Act in determining and meeting their obligations under this part.

(2) (i) RESERVED.

(ii) The Department may exclude from such calculation:

(A) The actual emissions of sources for which no fee is required under §70.9(b)(4);

(B) The amount of a Part 70 source's actual emissions of each regulated pollutant that the source emits in excess of four thousand (4,000) tpy;

(C) A Part 70 source's actual emissions of any regulated pollutant, the emissions of which are already included in the minimum fees calculation; or

(D) The insignificant quantities of actual emissions not required in a permit application pursuant to §70.5(c).

(iii) "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant emitted from a Part 70 source over the preceding calendar year or any other period determined by the Department to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the Department pursuant to the preceding sentence.

(iv) The program shall provide that the $25 per ton per year to be collected by the fee schedule shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

(A) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period

ending on August 31 of each calendar year.

(B) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(v) "Regulated pollutant," which is used only for purposes of §70.9(b)(2), means any "regulated air pollutant" except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

(3) The Department's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of §70.9(b)(1) or (b)(2). Nothing in the provisions of this section shall require a Department to calculate fees on any particular basis or in the same manner for all Part 70 sources, all classes or categories of Part 70 sources, or all regulated air pollutants, provided that the Department collects a total amount of fees sufficient to meet the program support requirements of §70.9(b)(1).

(4) Notwithstanding any other provision of this Section, during the years 1995 through 1999 inclusive, no fee for purposes of Title V shall be required to be paid with respect to emissions from any affected unit under Section 404 of the Act.

(5) RESERVED.

(c) RESERVED.

(d) RESERVED.

R. 61-62.70 History - *South Carolina State Register*:

Vol. 17, Issue No. 9, (Doc. No. 1664), September 24, 1993;
Vol. 18, Issue No. 5, (Doc. No. 1706), May 27, 1994;
Vol. 19, Issue No. 2, (Doc. No. 1800), February 24, 1995;
Vol. 22, Issue No. 8, (Doc. No. 2329), August 28, 1998;
Vol. 25, Issue No. 10, (Doc. No. 2648), October 26, 2001;
Vol. 26, Issue No. 8, (Doc. No. 2736), August 23, 2002;
Vol. 27, Issue No. 6, (Doc. No. 2840), June 27, 2003;
Vol. 28, Issue No. 9, (Doc. No. 2913), September 24, 2004.